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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,667	12/21/2001	Raul R. Mena	17147.00011	7032

7590

08/27/2003

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EXAMINER

O CONNOR, CARY E

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 08/27/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/026,667

Applicant(s)

MENA

Examiner

Cary E. O'Connor

Art Unit

3732

**– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____

Art Unit: 3732

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention..

Claims 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The radius of 0.15 does not have a unit designated.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 6, 8, 9, 11, 13 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Lazzara et al (5,022,860). Lazzara shows a fixation device forming a dental implant comprising a shaft having an outer face 38.1, a threaded portion wound around the outer face and forming a helical groove, the threaded portion comprising a first face having a first end portion in curved contact with the outer face, a second end portion opposite the first end portion, a second face having a third end portion in curved contact with the outer face, a forth end portion opposite the third end portion, and a third end face 32.7 coupled to the second end portion and the forth end portion and being substantially parallel with the outer face (see Fig. 3A and column 3, lines 49-59). As to claim 3, the third face contacts the second end

Art Unit: 3732

portion at a first point and the forth end portion at a second point. As to claims 6, 8, 9, 11 and 13, see column 4, lines 54-60.

Claims 1, 2, 4-6, 11 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Hansson (6,036,491). Hansson shows a fixation device comprising a shaft having an outer face, a threaded portion wound around the outer face and forming a helical groove, the threaded portion comprising a first face having a first end portion in curved contact with the outer face, a second end portion opposite the first end portion, a second face having a third end portion in curved contact with the outer face, a forth end portion opposite the third end portion, and a third end face coupled to the second end portion and the forth end portion and being substantially parallel with the outer face. As to claim 2, note that the third face is in curved contact with the first and forth end portions. As to claims 4 and 5, note column 3, line 7. As to claims 6 and 11, note column 3, line 8.

Claims 1, 3, 6-8, 11 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Sandhaus (4,466,796). Sandhaus shows a fixation device 1 comprising a shaft 3 having an outer face, a threaded portion wound around the outer face and forming a helical groove, the threaded portion comprising a first face having a first end portion in curved contact with the outer face, a second end portion opposite the first end portion, a second face 8 having a third end portion in curved contact with the outer face, a forth end portion opposite the third end portion, and a third end face 7 coupled to the second end portion and the forth end portion and being substantially parallel with the outer face. As to claim 3, the third face contacts the second end portion at a first point and the forth end portion at a second point (Figure 3). As to claims 6 and 11, the distance between the plane of the outer face and the plane of the third face P_s is about 0.55 mm (col. 2, lines 45-46). As to claims 7 and 8, note that radius r is 0.2 mm which is at least 0.15 mm.

Claims 1, 3, 17 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Ura (6,234,797). Ura shows a fixation device comprising a shaft having an outer face, a threaded portion wound around the outer face and forming a helical groove, the threaded portion comprising a first face 40 having a first end portion in curved contact with the outer face, a second end portion opposite the first end portion, a second face 41 having a third end portion in curved contact with the outer face, a forth end

Art Unit: 3732

portion opposite the third end portion, and a third end face 38 coupled to the second end portion and the forth end portion and being substantially parallel with the outer face. As to claim 3, the third face contacts the second end portion at a first point and the forth end portion at a second point (Figure 5). As to claim 17, not the transverse slot 32 along at least a portion of the threaded portion.

Claims 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Niznick (5,061,181). Niznick shows a fixation device forming a dental implant comprising a shaft 31 having an outer face, a plurality of fin sections 33-39 disposed along a portion of the outer face, coaxial with the shaft and having a diameter greater than the diameter of the outer face, each fin section comprising a first face having a first end portion in curved contact with the outer face, a second end portion opposite the first end portion, a second face having a third end portion in curved contact with the outer face, a forth end portion opposite the third end portion, and a third end face coupled to the second end portion and the forth end portion and being substantially parallel with the outer face.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10, 12, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lazzara (5,022,860) in view of Grell et al (4,177,524). It would have been obvious to one of ordinary skill in the art at the time the invention was made to adapt the dental implant of Lazzara for use as an orthopedic implant in view of the similar structural characteristics shown in Figure 1 of Grell. As to claim 16, Lazzara does not disclose the length of the third face. It would have been obvious to make the length of the third face between 0.25mm and 3.00 mm because Lazzara discloses the general conditions of the third face and it has been held that where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. In re Swain et

Art Unit: 3732

al., 33 CCPA (Patents) 1250, 156 F.2d 239, 70 USPQ 412; Minnesota Mining and Mfg. Co. v. Coe, 69 App. D.C. 217, 99 F.2d 986, 38 USPQ 213; Allen et al. v. Coe, 77 App. D.C. 324, 135 F.2d 11, 57 USPQ 136.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lazzara (5,022,860). Lazzara does not disclose the length of the third face. It would have been obvious to make the length of the third face between 0.25mm and 3.00 mm because Lazzara discloses the general conditions of the third face and it has been held that where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. In re Swain et al., 33 CCPA (Patents) 1250, 156 F.2d 239, 70 USPQ 412; Minnesota Mining and Mfg. Co. v. Coe, 69 App. D.C. 217, 99 F.2d 986, 38 USPQ 213; Allen et al. v. Coe, 77 App. D.C. 324, 135 F.2d 11, 57 USPQ 136.

Claim Objections

Claim 19 is objected to because of the following informalities: In line 3, "other" should be changed to --outer--. Appropriate correction is required.

Information Disclosure Statement

The information disclosure statement filed July 10, 2002 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. Copies of the references have been misplaced. Applicant is requested to resubmit copies of any foreign patent and publication cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cary E. O'Connor whose telephone number is 703-308-2701. The examiner can normally be reached on M-Th, 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 703-308-0858. The fax phone numbers for the organization where this

Application/Control Number: 10/026,667

Page 6

Art Unit: 3732

application or proceeding is assigned are 703-308-2708 for regular communications and 703-308-2708 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Cary E. O'Connor
Primary Examiner
Art Unit 3732

ceo
August 25, 2003